

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 18804 of 2005(L)

OS.106/2000 of PRINCIPAL SUB COURT,KOCHI

PETITIONER:

**LITTLE FLOWER KURIES & ENTERPRISES LTD.,
A COMPANY REGISTERED UNDER THE COMPANIES ACT,1956,
WITH ITS REGISTERED OFFICE AT KUNNUMPURAM,
FORT COCHIN, COCHIN-1, REPRESENTED BY ITS
CHAIRMAN SRI.O.T.ALEXANDER.**

BY ADV. SRI.JIMMY JOHN VELLANIKARAN

RESPONDENTS:

- 1. M.A.BENOY, AGED ABOUT 39 YEARS,
S/O. M.O. AUGUSTINE, MENACHERRY HOUSE,
RESIDING AT HOUSE NO.VIII/15, NAYARAMBALAM DESOM,
COCHIN TALUK.**
- 2. M.O. AUGUSTINE, S/O.OUSEPH MENACHERY,
AGED ABOUT 67 YEARS, RESIDING AT HOUSE NO.VIII/15,
NAYARAMBALAM DESOM, COCHIN TALUK.**
- 3. MARY AUGUSTINE, W/O. M.O. AUGUSTINE,
AGED ABOUT 61 YEARS, RESIDING AT HOUSE NO.VIII/15,
NAYARAMBALAM DESOM, COCHIN TALUK.**
- 4. PAPPU, AGED ABOUT 59 YEARS,
S/O. MATHEW, MANAPPALLY HOUSE, NARAKKAL MURI,
NARAKKAL VILLAGE, NARAKKAL P.O.**

BY

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WPC.NO.18804/2005 L

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF JUDGMENT DTD. 20/03/04 IN O.S.106/2000 PASSED BY THE ADDL.SUB JUDGE, KOCHI.

EXT.P2: COPY OF DECREE DTD. 20/03/04 IN O.S.106/2000 PASSED BY THE ADDL.SUB JUDGE, KOCHI.

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 18804 OF 2005

Dated this the 9th day of August , 2007

JUDGMENT

Sri.Antony.....submits that the 4th respondent who alone remains to be not served had not raised any contest before the court below and that no relief also was sought against him. This being the position, I am of the view that non service of notice to the 4th respondent need not deter this court from considering the writ petition. Hence the writ petition is not defective.

The petitioner company has a genuine grievance. Even though the suit for recovery of peony filed by them was decreed as prayed for, the court below as omitted to award cost. In fact there was 4th defendant in the suit and the 4th respondent herein is the additional 4th defendant. Against that defendant, no relief had been claimed in the suit. The learned Subordinate Judge in paragraph 23 (issue No.3) of Ext.P1 judgment has found that

the plaintiff is not liable to pay the cost since the 4th defendant has no direct transaction with the plaintiff. However, ultimately the learned subordinate Judge has passed decree only for the amount so claimed in the suit as prayed for, but not for the cost which was also prayed for. It is transparently clear that it was due to an accidental slip on the part of the court itself that the judgment and decree did not provide for payment of cost by respondent 1 to 3 to the plaintiff. The other respondents were not even contesting. Section 35 of the CPC will show that the rule is cost shall follow the event and when the court directs that no cost shall follow the event the court is obliged to state reason in writing. In the instant case though I have observed that the grievance of the petitioner is genuine, I am afraid that their remedy is not to invoke the supervisory jurisdiction of this court under Article 227. The petitioner is permitted to file an application before the learned Subordinate Judge invoking Section 152 of the CPC seeking amendment of the judgment and decree so that respondents 1 to 3 will be made liable for the cost of the suit. Since it is obvious that it was due to an accidental slip or omission on the part of the court, that cost was not

awarded question of limitation will not proper. At any rate, the time during which this writ petition was pending before this court will be excluded by the court for the purpose of Section 14 of the Limitation Act. The petitioner is permitted to file an application within one month from today.

**PIUS C. KURIAKOSE,
JUDGE.**

Dpk